Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-115
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	

AT&T COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

Pursuant to the Commission's Further Notice of Proposed Rulemaking, released on February 26, 1998, and Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits these comments on the issue of whether more regulation is needed to permit customers to restrict use of Customer Proprietary Network Information ("CPNI") for *all* marketing purposes.[1] *Further Notice*, paras. 204-205. Such regulation is unnecessary to protect consumers, has no statutory basis, and would serve only to frustrate the procompetitive goals of the 1996

[1] Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27, released February 26, 1998 ("*CPNI Order*" and "*Further Notice*," respectively).

Telecommunications Act.[2] Accordingly, AT&T urges the Commission not to adopt further regulations regarding consumers' option to restrict the use of their CPNI in this manner.

The Commission's inquiry as to whether regulation should afford a no marketing option disregards a number of critical facts. First, carriers operating in a competitive market have powerful incentives to honor reasonable customer expectations of privacy or risk losing customers to rivals. Second, as the Commission found in the *CPNI Order*, customers, in fact, reasonably expect carriers to use CPNI within the existing customer-carrier relationship to offer service variants to them. Third, to the extent that consumers are concerned about intrusive telemarketing campaigns, they have the right to shield their privacy from unwanted calls by directing carriers to place them on the firm's do-not-call lists.[3] Fourth, unlike in other contexts (*e.g.*, slamming), there is a distinct absence of customer complaints that would warrant the Commission even entertaining the possibility of creating a no marketing rule which, in all events, is not needed to protect reasonable expectations of privacy. In these circumstances, the

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[2] Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 151, et seq. ("1996 Act").

[3] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 7 FCC Rcd. 8752 (1992).

creation of a new cumbersome solution to a non-existent problem would be wholly without merit and, indeed, inconsistent with the Congress' intent.

In the *CPNI Order*, the Commission implemented Section 702 of the Telecommunications Act of 1996 (which adds a new Section 222 to the Communications Act of 1934) by adopting a "total service approach" to a carrier's use of CPNI for marketing purposes. Specifically, the Commission construed Section 222(c)(1) to mean that a carrier may use CPNI, without customer approval, for providing or marketing service offerings among the categories of services (*i.e.*, local, long distance, and wireless) to which the customer already subscribes from that carrier. *CPNI Order*, para. 32.[4] The Commission found that permitting carriers to use CPNI, without customer approval, to market offerings related to the customer's "existing service relationship" with the carrier under a "total service approach" offers convenience

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[4] In Section 222(c) and (d), the 1996 Act establishes requirements pertaining to the privacy of customer proprietary network information. Under Section 222(f), CPNI is defined as "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship." Absent prior customer approval, Section 222(c)(1) authorizes a telecommunications carrier to use individually identifiable CPNI obtained from the provision of a particular telecommunications service solely to provide the telecommunications service from which such information is derived, or services necessary to provide that telecommunications service.

for the customer while preventing the use of CPNI in ways that the customer would not expect.[5] In the context of the existing customer-carrier relationship, permission to use CPNI can be *inferred* because the customer has implicitly approved use of CPNI within that relationship. *CPNI Order*, paras. 21-35, 51, 53-58, 63-65.[6]

In so holding, the Commission expressly found that "[t]he legislative history confirms . . . that in section 222 Congress intended neither to allow carriers unlimited use of CPNI for marketing purposes as they move into new service avenues opened through the 1996 Act, nor to

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[5] Accordingly, if a customer subscribes to service in a single category from the carrier, then, absent customer approval, the carrier will only be able to use that customer's CPNI within that category (*i.e.*, long distance CPNI to market long distance services, local CPNI to market local services, and wireless CPNI to market wireless services). By contrast, if the customer subscribes to more than one category of service from the carrier, then the carrier may use CPNI, without customers approval, within all of the categories where a relationship exists with the customer.

[6] Quite naturally, customers, particularly large multinational corporations, to which AT&T provides international services and network management both in the United States and abroad expect AT&T to use their CPNI for operational purposes as well as to craft appropriate service offers. This sometimes requires AT&T employees and affiliates located in other countries to be able to access CPNI stored in the United States, as permitted under the Commission's total service approach. The FBI, however, asks the Commission to constrain this right by drawing artificial distinctions based on national boundaries. *Further Notice*, paras. 208-209. There are no such limitations in the 1996 Act, and the Commission should therefore decline to adopt the FBI's proposal to restrict access to such information from outside the United States.

restrict carrier use of CPNI for marketing purposes altogether." *CPNI Order*, para. 37. Moreover, as the Commission correctly found, "[m]ost carriers . . . view CPNI as an important asset of their business, and . . . hope to use CPNI as an integral part of their future marketing plans. Indeed, as competition grows and the number of firms competing for consumer attention increases, CPNI becomes a powerful resource for identifying potential customers and tailoring marketing strategies to maximize customer response." *Id.*, para. 22.

Despite these indisputable facts, the Commission now -- quite surprisingly -- seeks comment on whether consumers should be able to restrict *all* marketing use of CPNI *even within* the boundaries of the customer-carrier relationship under the total service approach. First, as the Commission acknowledges, there is no explicit statutory basis for such a requirement, given that, as it just determined, carriers are permitted to use CPNI for marketing within the existing customer-carrier relationship. The *Further Notice's* suggestion (para. 205) that such a customer option may be supported by the general duty of carriers to protect proprietary information under 222(a) and the principle of customer control embodied in 222(c) cannot be reconciled with the plain language of 222(c)(1) which expressly allows the use of CPNI in the provision of the service from which it is derived or services necessary to or used in the provision of such service.

Moreover, even if the Commission could, under its general powers, require carriers to provide such a no marketing option to consumers, it would serve no beneficial purpose. Rather, as the Commission found, the total service approach comports with reasonable customer expectations of privacy and enables carriers to use CPNI in a limited manner for the consumer's "benefit and convenience." *CPNI Order*. para. 35. "The total service approach permits CPNI to be used for marketing purposes only to the extent that a carrier is marketing alternative versions, which may include additional or related offerings of the customer's existing subscribed service. . . . [I]t allows the carrier to suggest more beneficial ways of providing the service to which the customer presently subscribes." *Id.* There is no basis for circumscribing this finding, which is consistent with the statutory language and design as well as consumers' interests.

To the contrary, a no marketing option would only make carrier product marketing efforts more costly and less efficient, all to the detriment of consumers and competition. For example, if the restriction option were exercised, a carrier would not be able to review a long distance customer's CPNI to determine if the customer could benefit from subscribing to a different long distance pricing plan that could result in substantial cost savings to the customer and would otherwise better meet the customer's telecommunications needs. Moreover, a

no marketing option would potentially impose on carriers the cost of polling all customers (even if a carrier did not intend to use CPNI in a manner where approval is required under the *CPNI Order*) to give customers the opportunity to revoke the consent implicit in the total service approach. There are no consumer benefits associated with these results.

To better serve consumer welfare and make competition more effective, AT&T urges the Commission not to adopt a no marketing approach. Allowing carriers to use CPNI within the category of service (local, long distance and/or wireless) to which the customer already subscribes with the carrier is consistent with legitimate customer expectations regarding the use of that information. Moreover, enabling carriers to conduct their marketing activities in an efficient manner would greatly advance the 1996 Act's procompetitive agenda. Consumers would reap the fruits of competition through increased choice, innovative new service offerings, and lower prices, all of which can be attained without compromising or impairing any reasonable privacy interest that a consumer may have in such information.

In short, there is no sound basis in law or policy for the Commission to adopt new regulations permitting consumers to restrict use of CPNI for all marketing purposes. Rather, the Commission should acknowledge that telecommunications service providers are permitted to use

CPNI for the development and marketing of telecommunications services within the parameters of the total service approach. This construction will better serve the interests of consumers and the procompetitive goals of the Act.

CONCLUSION

For the reasons stated above, the Commission should not adopt new and unnecessary regulations to permit consumers to restrict all marketing use of CPNI.

Respectfully submitted,

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